

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2006-001324

04/04/2006

HONORABLE RUTH H. HILLIARD

CLERK OF THE COURT
L. Gilbert
Deputy

FILED: 04/06/2006

G H A TECHNOLOGIES INC

DONALD A LOOSE

v.

ALEX SANCHEZ, et al.

PATRICIA A PREMEAU

MINUTE ENTRY

Defendants' Motion for Declaratory Ruling on Conflict Issue and plaintiff's Counter-Motion to Disqualify Defendants' Attorney have been under advisement. Having considered all memoranda submitted and the arguments of counsel the Court finds and orders as follows.

Ethical Rule (ER) 1.9(a) states that "A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially similar matter...". Comment 3 (2003 Amendment) explains that "Matters are 'substantially related' for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. ... In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that is relevant to the matter in question ordinarily will preclude such a representation.

In the instant case, Gina Horn was receptionist and then legal assistant to plaintiff's counsel before joining defense counsel's firm. The pending matter did not arise while Ms. Horn worked for Mr. Loose's firm; however, while Horn worked for Loose's firm there were two cases that were handled by the firm involving anti-solicitation clauses. One case involved a different anti-solicitation clause while a second case involved the same language at issue in this case.

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Plaintiff urges disqualification of Ms. Premeau's firm for the reason that Ms. Horn may have learned strategy his firm was taking in the earlier anti-solicitation cases that may have an impact on the present case. While acknowledging that the prior case involving the same anti-solicitation clause did not have an evidentiary hearing on a preliminary injunction and was resolved very early in the proceedings, plaintiff still urges disqualification.

The Court notes that the pending action is based on completely different facts than the prior two cases pending when Ms. Horn worked for Mr. Loose's firm. In addition, plaintiff has not established that the issues to be decided in the present case are essentially the same as those in the prior anti-solicitation clause cases handled by Mr. Loose's firm when Ms. Horn was employed there. The Court is not satisfied that Ms. Horn gained confidential information while working for Mr. Loose's firm that may be used to the detriment of plaintiff in the instant case.

In addition, plaintiff's counsel knew that Ms. Horn was employed by defendants' attorney prior to the taking of defendant's deposition but made no objection to defense counsel's continued representation until after the deposition was concluded. If plaintiff had serious objection to counsel's continued representation in this case, any such objection should have been made before the deposition was conducted, not after. The timing of the objection suggests that any concern about Ms. Horn's employment was not serious but was made for some other purpose.

The Court finds that there is not sufficient factual or legal cause to disqualify defense counsel.

Accordingly, it is ordered denying plaintiff's counter-Motion to Disqualify Defendants' Attorney. It is ordered allowing defense counsel to remain as defendants' attorney in this case.